

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
MELVIN RAY FOWLER and	)	
SUSAN DESTEIGUER FOWLER,	)	
	)	No. BK 87-40008
Debtors.	)	

MEMORANDUM AND ORDER

This matter is before the Court on the Trustee's Amended Objection to Exemptions. Debtor, Melvin Fowler, claims a homestead exemption in the amount of \$7,500.00. The Trustee objects to debtor's exemption on the basis that he abandoned his homestead prior to the time he filed his Chapter 7 bankruptcy petition. The relevant facts are as follows:

On January 6, 1987 debtors filed a joint petition for relief under Chapter 7 of the Bankruptcy Code. Prior to that time, the following events occurred. In December 1986, Melvin Fowler, unable to find work in Southern Illinois, obtained employment with Cain Realtors in Kalamazoo, Michigan. The offer of employment, however, was conditioned upon Mr. Fowler obtaining his Michigan real estate license. On January 4, 1987, because of marital difficulties and upon Susan Fowler's request, Melvin Fowler left their home to live in Michigan. As of January 6, 1987, the date the bankruptcy petition was filed, Mr. Fowler had not yet obtained his Michigan license, and to that extent, his employment with Cain Realtors was still "conditional."

On January 9, 1987, Mr. Fowler paid a security deposit on an apartment in Kalamazoo, and on January 22, 1987, he signed a one

year lease for that apartment. Since that time, Mr. Fowler has passed his Michigan real estate examination, has been employed by Cain Realtors and has resided in Kalamazoo, Michigan. The Fowlers were divorced on November 9, 1987.

The Trustee contends that Mr. Fowler abandoned his homestead prior to the filing of his bankruptcy petition. The Trustee further claims that Mr. Fowler did not have the intention to return to his home on the date that the petition was filed. In response, debtor contends that he never intended to abandon his homestead, and that he only temporarily left the area seeking employment.

It is well settled that "[t]he goal of the homestead exemption is to shelter the family and allow the debtor a chance to regain his footing." Matter of Reuter, 56 B.R. 39, 41 (Bankr. N.D. Ill. 1985). "Exemption laws are enacted for the relief of the debtor and should be liberally construed." In re Turner, 44 B.R. 118, 119 (Bankr. W.D. Mo. 1984). "Whether one entitled to a homestead may be said to have abandoned it by moving away from it is largely a matter of intention to be determined by the facts of each case." Kawszewicz v. Kawszewicz, 53 N.E. 2d 386, 389 (Ill. 1944). See also Matter of Neis, 723 F.2d 584, 589 (7th Cir. 1983). The critical time for determining the debtor's intention is the date that the bankruptcy petition was filed. In re Grindal, 30 B.R. 651, 653 (Bankr. D. Me. 1983).

In determining whether debtor intended to abandon his homestead, the Court need not find that debtor actually occupied the homestead on the filing date. Id. at 653. The cases have held that "temporary absence in search of a means of livelihood...does not constitute

abandonment of a homestead." In re Chalin, 21 B.R. 885, 887 (Bankr. W.D. La. 1982). "It is generally recognized that a claimant for purposes of health, pleasure, business, or for any cause...may absent himself from his homestead without forfeiting his homestead rights...." Lehman v. Cottrell, 19 N.E. 2d 111, 113 (Ill.App.Ct. 1939). See also Dixon v. Moller, 356 N.E. 2d 411, 415 (Ill.App.Ct. 1976). "Absence for this purpose does not give rise to abandonment if there is an intent to return as soon as the circumstances will permit." In re Chalin, 21 B.R. at 887.

In the present case, the Court finds, from all of the evidence, that Mr. Fowler did not possess the requisite intent to abandon his homestead on the date the petition was filed. Any intent to abandon was clearly not absolute, but rather, was conditioned on various events. Although he left for Michigan two days before the petition was filed, Mr. Fowler testified that until the divorce, he always kept the hope of returning to his home should his marital problems be resolved. Furthermore, although he was offered employment by Cain Realtors in December 1986, this offer was conditioned upon Mr. Fowler obtaining his Michigan real estate license. At the time he filed his bankruptcy petition, Mr. Fowler had not yet passed the real estate exam, which suggests that any intent to abandon his homestead was conditional and not absolute. Finally, Mr. Fowler testified that he accepted the job in Michigan because he needed the income, and that if he were able to secure employment in Southern Illinois, he would return to that area. All of these circumstances indicate that Mr. Fowler did not intend to abandon his homestead on the date of filing.

The Trustee also contends that under Ill.Rev.Stat. ch. 110, ¶12-906, Mr. Fowler must invest any proceeds of sale (in the amount of his exemption) into another homestead within one year. Paragraph 12-906 provides, in part:

[T]he proceeds...to the extent of \$7,500, shall be exempt from judgment or other process, for one year after the receipt thereof...and if reinvested in a homestead the same shall be entitled to the same exemption as the original homestead.

Ill.Rev.Stat. ch. 110, ¶12-906 (emphasis added). The Court does not believe that this statute requires debtor to reinvest his exemption into another homestead, nor could the Court locate any Illinois case interpreting the statute in that manner. The case cited by the Trustee is an Oregon case involving an Oregon statute that differs considerably from the Illinois statute quoted above.

Accordingly, for the reasons stated above, the Trustee's Amended Objection to Exemptions is DENIED.

\_\_\_\_\_/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: December 18, 1987